

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ZACHARY R. GRAHAM,)	
)	
Plaintiff,)	Civil Action No. 21-146
)	
v.)	District Judge Arthur J. Schwab
)	Magistrate Judge Maureen P. Kelly
PENNSYLVANIA DEPARTMENT OF)	
CORRECTIONS and A. KULICK,)	
)	
Defendants.)	

ORDER OF COURT

Plaintiff initiated this matter by submitting a Motion and Declaration in Support of Motion to Proceed *in Forma Pauperis* (“IFP”) -- which the Court granted -- and a Complaint. [ECF 1](#), [ECF 9](#), [ECF 10](#). Plaintiff filed an amended complaint on June 8, 2021. [ECF 13](#). On October 18, 2021, Defendants filed a motion to dismiss the amended complaint. [ECF 27](#).

In her amended complaint, Plaintiff originally named three Defendants but shortly thereafter, she voluntarily dismissed one of the Defendants, leaving only the Pennsylvania Department of Corrections (the “DOC”) and A. Kulick as defendants to this lawsuit. Plaintiff’s claims were brought against Defendant Kulick individually and in his official capacity.

Plaintiff’s Amended Complaint asserted three Eighth Amendment claims under [42 U.S.C. § 1983](#), in Counts I (deliberate indifference to serious medical needs), II (failure to protect from substantial risk of harm or injury), and III (deliberate indifference to medical needs as a result of inadequate, unprofessional, lack of training, failure to follow training, ignoring policies and procedures and deficiencies in operation, management and control of healthcare). In addition to her three Eighth Amendment claims, Plaintiff also brought six other claims: a *Monell* claim at Count IV; an Americans with Disabilities Act (“ADA”) and Rehabilitation Act claim at

Count V; a medical malpractice claim at Count VI; a professional liability claim at Count VII; a negligence claim at Count VIII; and an *ex parte Young* claim at Count IX.

On October 18, 2021, the two remaining Defendants filed a motion to dismiss the amended complaint and brief in support in accordance with Fed.R.Civ.P. 12(b)(6). [ECF 27](#), [ECF 28](#). Plaintiff timely filed a response and brief in opposition to the motion to dismiss. [ECF 35](#), [ECF 36](#). The Magistrate Judge filed a Report and Recommendation ([ECF 37](#)) granting in part Defendants' motion to dismiss, but allowing three claims to proceed against Defendant Kulick and one claim to proceed against Defendant DOC.

A copy of the Magistrate Judge's Report and Recommendation ("R&R") was mailed to Plaintiff on April 5, 2022. Objections to the R&R were due on or before April 22, 2022. [ECF 37](#). To date, no objections to the R&R have been filed by any party.

AND NOW, this 23rd day of June 2022, upon independent review of the record, and upon consideration of Magistrate Judge Kelly's April 5, 2022, Report and Recommendation, IT IS HEREBY ORDERED that the Magistrate Judge's April 5, 2022 Report and Recommendation ([ECF 37](#)) is adopted as the Opinion of this Court, and thus Defendant's Motion to dismiss ([ECF 27](#)) is granted in part and denied in part.

Accordingly, the only remaining claims which may proceed are as follows:

Count I – an Eighth Amendment claim under [42 U.S.C. § 1983](#), asserting deliberate indifference to serious medical needs – against Defendant Kulick;

Count V – an ADA/Rehabilitation Act claim against Defendant DOC and Kulick (in his official capacity only); and

Count VIII – a negligence claim against Defendant Kulick.

So ORDERED this 23rd day of June, 2022.

s/Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All counsel of record

The Honorable Maureen P. Kelly
United States Magistrate Judge

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